



**The Comptroller General
of the United States**

Washington, D.C. 20548

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Decision

Matter of: Jack Faucett Associates--Request for
Reconsideration

File: B-233224.2

Date: June 12, 1989

DIGEST

Prior decision is affirmed where corrective action recommendation is consistent with applicable decisions of our Office.

DECISION

Jack Faucett Associates requests reconsideration of our decision in Jack Faucett Associates, B-233224, Feb. 3, 1989, 89-1 CPD ¶ 115, in which we sustained Faucett's protest against the award of a contract to Apogee Research, Inc., under request for proposals (RFP) No. DTFH61-88-R-00104, issued by the Federal Highway Administration, Department of Transportation and recommended that Transportation reevaluate the proposals. Faucett contends that our recommendation is inconsistent with prior decisions of our Office.

We affirm our prior recommendation.

Transportation had determined that the offerors' technical proposals were essentially equal and made award to Apogee, as the low cost offeror. We sustained the protest because we found that Transportation had not evaluated proposals in accordance with the technical evaluation criteria stated in the RFP. We concluded that if the evaluation criteria were properly weighted that the agency may have determined that the proposals were not equal but that Faucett's proposal was technically superior. Accordingly, we recommended that Transportation reevaluate the proposals in accordance with the stated solicitation criteria, and if Faucett's and Apogee's proposals were found to be essentially equal, then award to the low cost offeror under the RFP would be proper.

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However, if the evaluation revealed that the proposals were not essentially equal but that Faucett's proposal was technically superior, then Transportation should terminate Apogee's contract for the convenience of the government and award to Faucett.

The RFP had informed offerors that the evaluation criteria were stated in descending order of importance. The technical evaluation panel, however, assigned a weight of 40 percent to criterion 1 and 60 percent to criterion 2. Transportation has informed us that, in accordance with our recommendation, the weighting of the evaluation criteria was changed to 52 percent for criterion 1 and 48 percent for criterion 2 to properly reflect the relative order of importance stated in the RFP. The application of this new weighing scheme to the offerors' proposals resulted in Faucett's technical score increasing from 8.56 to 8.63 while Apogee's score decreased from 8.24 to 8.22. Transportation then assessed the impact of the offerors' best and final offers (BAFO). The agency concluded that Faucett's technical score would not change as result of the BAFO because while Faucett increased the hours proposed for its principal investigator it did not address a question raised by the agency regarding the qualifications of an unnamed programmer. The contracting officer concluded that, despite the 4 percent difference between Faucett's and Apogee's scores, the proposals were essentially equal.

Faucett, in response to Transportation's rescoring of the technical proposals, repeats its argument that the protester's 4 percent advantage in technical scores outweighs the awardee's .9 percent price advantage. Faucett contends that we erred in stating that where selection officials reasonably regard technical proposals as essentially equal, cost or price may become the determinative factor in making award, even where the solicitation scheme assigns cost less importance than technical factors. See Sparta, Inc., B-228216, Jan. 15, 1988, 88-1 CPD ¶ 37. Faucett argues that our decision in Sparta is inconsistent with our decision in Transportation Research Corp., B-231914, Sept. 27, 1988, 88-2 CPD ¶ 290.

It is well settled that where an agency reasonably regards proposals as essentially equal technically, cost or price may become the determinative consideration. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. This is true even where the solicitation contemplated the award of a cost-reimbursement contract and provided that cost was the least important evaluation

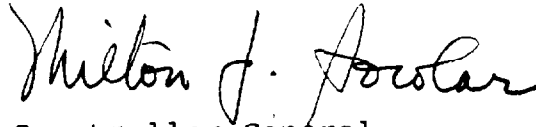
factor. Id. Indeed, the Competition in Contracting Act of 1984 requires that price be given appropriate consideration in the award of all negotiated government contracts. 41 U.S.C. § 253b(d)(4) (Supp. IV 1986).

In Transportation Research Corp., B-231914, supra, we stated that where an RFP does not indicate a relative weight for cost, but states it will be considered, we assume that technical considerations and cost considerations are approximately equal in weight. This standard is used in the initial evaluation and scoring of proposals. If two proposals are considered essentially equal technically following such an evaluation, cost can become the determinative factor. This is exactly what occurred in both the above-cited case and in Sparta, Inc., B-228216, supra. We fail to see any inconsistency.

Further, we see no basis to question the contracting officer's determination with regard to technical equality. We have long held that technical point scores are useful as guidelines for intelligent decision-making in the procurement process, but whether a given point spread between competing proposals indicates a significant superiority of one proposal over another depends upon the facts and circumstances of each procurement and is primarily a matter within the discretion of the procuring agency. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325, in which we upheld a contracting officer's determination that technical proposals were essentially equal despite a 15.8 percent difference in technical point scores. Award should not be based on the difference in technical scores per se, but should reflect the contracting officer's considered judgment of the significance of that difference. PRC Kentron, Inc., B-230212, June 7, 1988, 88-1 CPD ¶ 537. In challenging such decisions, a protester's mere disagreement with the contracting officer's judgment does not show that the evaluation was unreasonable. Id.

Here, Faucett does no more than state that its 4 percent advantage in technical point scores demonstrates its technical superiority. As noted above, the determining element is not the difference in technical scores but the contracting officer's judgment concerning the significance of the difference. Because Faucett does not show that the contracting officer's judgment was unreasonable, we have no basis to question the agency's determination.

The prior decision is affirmed. Further, we find that Transportation has properly followed our corrective action recommendation, as a result of which it has reasonably determined that the proposals were essentially equal and that award to Apegee, as the low cost offeror, was warranted.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States